The Honorable Brian D. Lynch
Chapter: 11

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In Re: HAWKS PRAIRIE INVESTMENT LLC, Debtor.	Case No. 10-46635-BDL
HAWKS PRAIRIE INVESTMENT LLC, and HOMESTREET BANK, as a creditor herein and derivatively, Plaintiffs, v. ANTHONY GLAVIN, his separate estate, and HOWARD TALBITZER, his separate estate, JOHN PHILBROOK AND CHRISTINE PHILBROOK, each as their sole and separate estate and John Does, 1 through 10. Defendants.	Adversary Proceeding No. COMPLAINT

For a cause of action against the Defendants, Plaintiffs allege as follows:

I. INTRODUCTION.

This is a complaint seeking to void in whole or in part a deed of trust against property of the Debtor under common law and under the Uniform Fraudulent Transfer Act, Ch. 19.40 RCW.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

The subject of the action is a leveraged buyout in which assets of the Debtor were subjected to a lien ("Hawks Prairie Third Deed of Trust") for an amount now alleged to be over $14 million to secure obligations of the Debtor's owner, Tri M. Vo ("Vo").

II. JURISDICTION AND VENUE.

This Court has jurisdiction over this case under 28 U.S.C. 1334. Because it is related specifically to the validity of a lien against property of the Debtor this cause of action is a "core proceeding" under 28 U.S.C. 157, including subsection (b)(2)(K) ("determinations of the validity, extent or priority of liens").

Venue in this Court is correct under 28 U.S.C. 1409.

III. PARTIES.

3.1 Hawks Prairie Investment LLC.

Hawks Prairie Investment LLC is the debtor in possession in the chapter 11 bankruptcy identified herein.

3.2 HomeStreet Bank.

HomeStreet is a creditor of Hawks Prairie holding both secured and potentially unsecured claims. HomeStreet also has authority to bring this action derivatively on behalf of the estate in its discretion or in the event the debtor in possession or its successor elects to withdraw from this suit.

3.3 Howard Talbitzer.

Howard Talbitzer is a creditor of Vo and is one of the holders of the Hawks Prairie Third Deed of Trust against Hawks Prairie at issue in this suit. Talbitzer's interests are indicated on the documents to be his separate property.

3.4 Anthony Glavin.

Anthony Glavin is a creditor of Vo and is one of the holders of the Hawks Prairie Third Deed of Trust against Hawks Prairie at issue in this suit. Glavin's interests are indicated on the documents to be his separate property.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

3.5 John Philbrook.

John Philbrook is an assignee of the Hawks Prairie Third Deed of Trust. John Philbrook's interests are indicated on the documents to be his separate property.

3.6 Christine Philbrook.

Christine Philbrook is an assignee of the Hawks Prairie Third Deed of Trust. Christine Philbrook's interests are indicated on the documents to be her separate property.

3.7 John Doe Defendants 1-10.

In the event that parties holding security interests in the Hawks Prairie Third Deed of Trust become owners of all or part of such Deed of Trust by voluntary transfer, foreclosure or litigation and the identity of such party is determined, that party will be added as a defendant in this action.

3.8 HomeStreet Lien.

HomeStreet holds security interests in the Hawks Prairie Third Deed of Trust which may or may not become absolute interests. Since and as long as HomeStreet is a party plaintiff in this action it will be bound by the result without being named as party defendant.

IV. FACTS.

4.1 Property:

Plaintiff Hawks Prairie Investment LLC is the owner of 337 acres of undeveloped real property located in Lacey, Washington and legally described in attachment A to this Complaint. Vo is (or was) the sole member of Pacific Investment Group LLC and GBS II Investment LLC which are in turn the sole owners of 50% each of the membership share of Hawks Prairie Investment LLC ("Hawks Prairie").

4.2 Members:

As of April 28, 2008, Vo, and defendants Glavin and Talbitzer ("T and G") were all members holding membership shares in Hawks Prairie Investment LLC by virtue of holding membership interests in LLCs which in turn held all of the membership interests in Hawks Prairie.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

4.3 Buy-Out:

On or about April 28, 2008, Vo issued a promissory note to T and G in the amount of $11,085,957.54. T and G transferred certain percentages of their memberships in Pacific Investment Group LLC and GBS II Investment LLC which held all of the Hawks Prairie membership shares to Vo.

4.4 Deed of Trust:

Also on or about April 28, 2008, Hawks Prairie, under Vo's direction and control, issued the Hawks Prairie Third Deed of Trust to T and G to secure Vo's obligations to the T and G for the amount stated in the note ($11,085,957.54). The Hawks Prairie Third Deed of Trust was recorded on May 5, 2008.

4.5 Increase in Obligation:

On or about January 9, 2009 T and G transferred their remaining membership interests in Pacific Investment Group LLC and GBS II Investment LLC to Vo and the parties executed an "Acknowledgement of Increased Loan Amount" increasing Vo's obligation to $12,761,595.00

4.6 No Value Received by Hawks Prairie.

In the transactions described above no value or consideration of any kind was received by Hawks Prairie in exchange for the grant of the Hawks Prairie Third Deed of Trust on Hawks Prairie's real property now alleged to be in excess of $14 million. The Hawks Prairie Third Deed of Trust dated April 28, 2008 does not identify or recite any consideration granted to Hawks Prairie. Notably omitted is any recitation of "for one dollar and other consideration grantor hereby grants. . . " or other similar language commonly used to provide the minimum consideration necessary to support the validity of a contract.

4.7 Philbrook Assignment.

On information and believe and as referenced in documents relating to this transaction, T and G assigned absolutely (rather than for security) a portion believed to be 12.14% of T and G's interest in the Hawks Prairie Third Deed of Trust to the John and Christine Philbrook.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

4.8 Assignment for Security Purposes.

T and G have also assigned on various dates following on or after November 20, 2009 their interest in the Vo note and the Hawks Prairie Deed of Trust for security purposes to certain other entities.

4.9 Chapter 11.

On August 13, 2010 Hawks Prairie filed a petition for relief under chapter 11 of Title 11 United States Code in the Bankruptcy Court for the Western District of Washington at Tacoma. The case number is 10-46635-BDL.

4.10 Creditor Status.

Plaintiff HomeStreet Bank ("HomeStreet") at all times material hereto was a creditor of Hawks Prairie and remains a creditor of Hawks Prairie.

4.11 Debtor in Possession Status.

Plaintiff, Hawks Prairie as debtor in possession, and HomeStreet Bank derivatively, by approval of the Court, have authority under 11 U.S.C. 544 to prosecute this action.

V. FIRST CAUSE OF ACTION—NO CONSIDERATION.

5.1 No Consideration to Hawks Prairie.

No consideration whatsoever was transferred to Hawks Prairie in, or in conjunction with the grant of the Hawks Prairie Third Deed of Trust to T and G.

5.2 No Debt of Hawks Prairie Secured.

The Note issued to T and G by Vo contains no reference to an obligation by Hawks Prairie as a co debtor, guarantor or otherwise. The note is solely the obligation of Vo and is not an obligation of Hawks Prairie.

5.3 No Recitation of Consideration.

The Hawks Prairie Third Deed of Trust recites no consideration other than the obligations of Vo which are not consideration to the issuer of the Deed of Trust sufficient to support the validity of a contract. The Hawks Prairie Third Deed of Trust also fails to recite even the minimal consideration of "one dollar and other consideration" or similar language.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

5.4 The Hawks Prairie Third Deed of Trust is Void for Complete Failure of Consideration.

The Hawks Prairie Third Deed of Trust is a contract that must be supported by consideration to be valid. There being no consideration for the contract, and under Washington Law, the contract is void and the lien created by the Deed of Trust is to no effect.

VI. SECOND CAUSE OF ACTION—UFTA—TRANSFERS FRAUDULENT AS TO PRESENT AND FUTURE CREDITORS

6.1 Insolvency.

At the time the Hawks Prairie Third Deed of Trust was granted to T and G, Hawks Prairie was insolvent and at all time material hereto remained insolvent under the definition of "insolvency" applicable under 19.40.041(a)(2)(i). Specifically, Hawks Prairie was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; further HomeStreet alleges that the debtor transferor reasonably should have believed that it would incur, debts beyond inability to pay as they became due. See, 19.40.041(a)(2)(ii).

6.2 The Value Received by Hawks Prairie Not Reasonably Equivalent Value.

The value received by Hawks Prairie (nothing) was not reasonably equivalent to the 12 million dollar lien granted against its property.

6.3 The Grant of the Deed of Trust Exacerbated the Insolvency of Hawks Prairie.

As a result of the grant of the Hawks Prairie Third Deed of Trust, Hawks Prairie's asset value net of its liens were further reduced by over $11 million dollars.

6.4 Transfers Within Four Years.

The alleged wrongful acts of the Defendants occurred within 4 years of the date of the filing of this action.

6.5 Fraudulent Factor--Insiders.

The grant of the Hawks Prairie Third Deed of Trust to T and G was a transfer to insiders of Hawks Prairie. A transaction between insiders constitute a badge of fraud under applicable law including R.C.W. 19.40.041(b).

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

VII. RELIEF REQUESTED.

7.1 Determination That the Deed of Trust is Void.

Based upon the facts and the causes of action herein alleged this Court should determine that the Hawks Prairie Third Deed of Trust is voided under the meaning of Title 11 United States Code.

7.2 Preservation of Voided Lien.

This Court should order that the voided Hawks Prairie Third Deed of Trust be preserved for the benefit of the estate and specifically for creditors of the estate as provided by 11 U.S.C. 551.

7.3 Injunction During This Action.

While this action is pending the Court should enter an order prohibiting the Defendants from enforcing, transferring or hypothecating the Hawks Prairie Third Deed of Trust or taking any action to exercise dominion over the Deed of Trust in any manner.

7.4 Permanent Injunction.

Upon the entry of judgment in this matter the Court should make permanent the injunction against the Defendants, and upon further notice and hearing, their successors and assigns, prohibiting all of them from enforcing, transferring or hypothecating the Hawks Prairie Third Deed of Trust or taking any action to exercise dominion over the Deed of Trust in any manner.

Wherefore the Plaintiffs pray for the relief requested herein and for such other and further relief as the Court may deem just.

DATED this 21st day of December, 2010.

FOSTER PEPPER PLLC

/s/ Dillon E. Jackson

Dillon E. Jackson, WSBA #1539
Attorneys for Secured Creditor
HomeStreet Bank

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

RYAN, SWANSON & CLEVELAND, PLLC

/s/ Timothy W. Dore

Timothy W. Dore, WSBA #17131
Attorneys for Hawks Prairie Investment LLC

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700